IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL N0.974 OF 2002

Shri Lansi Baptis D'souza,
Age: about 43 years, Indian
Inhabitant, residing at
Dahivali, Tal.:Kalyan,
Dist.Thane ...APPELLANT.
(Orig.Accused No.1)

Versus

1. The State of Maharashtra.

2. Shri.Maruti Navnath Satale,
Age: 29 years, Occ.Driver,
Pokharan Road No.1, behind
J.K.Chemicals, Thane (W),
Originally from : Nimgaon
Gangadi, Tal.Karjat,
Dist: Ahmednagar. ...RESPONDENT.

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Mr.B.G.Tangsali, Advocate for the Appellant.
Mrs.M.M.Deshmukh, APP, for the State.

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CORAM : S.B.MHASE &
SMT.V.K.TAHILRAMANI, JJ.

DATED : JANUARY 12, 2007.

JUDGMENT (PER SMT.V.K.TAHILRAMANI, J.) :

1. Through this Appeal, the appellant-original accused No.1 has challenged the judgment and order dated 16th April, 2002 passed by the learned Ist Adhoc Additional Sessions Judge, Nasik in Sessions Case No.50 of 2000. By the said judgment and

order, the learned Sessions Judge has convicted the appellant under Section 396 and alternatively under Section 302 of IPC and sentenced him to imprisonment for life. The learned Judge has also convicted the appellant under Section 392 alternatively under Section 394 of IPC and sentenced him to R.I. for seven years and fine of Rs.10,000/- in default R.I. for one year. The appellant was also convicted under Section 201 of IPC and sentenced to R.I. for three years. The learned Sessions Judge directed that all the substantive sentences of imprisonment shall run concurrently.

2. The prosecution case briefly stated is as under:-

. That, PW-2 Anand Vaidya resides at Thane. PW-1 Sanket and PW-8 Sachin are college going sons of PW-2 Anand Vaidya. The family owns one Tata Sumo jeep bearing No.MH-02-A-2002 and one Maruti van. These two boys i.e. PW-1 Sanket and PW-8 Sachin were conducting tourist business in the name and style "Sachin Tours and Travels". These two boys were giving the vehicles on hire to

customers. Navnath Bansi Satale was the driver employed by them in their Tourist business.

. According to the prosecution on 9.9.1998 the appellant-original accused No.1 came to the Vaidya's residence. The appellant-original accused No.1 approached PW-1 Sanket and gave his name as "Kashinath Jadhav". Accused No.1 wanted to know as to whether it was possible to give Tata-Sumo jeep on hire for his trip to Shirdi. PW-1 Sanket informed him that if he wanted to book the same it was necessary to make an enquiry regarding the availability of the vehicle. Accordingly on 12.9.1998 at about 8:00 p.m. "Kashinath Jadhav" contacted PW-8 Sachin on the telephone and stated that he wanted to hire the Tata-Sumo jeep for his trip to Shirdi on the following day i.e. on 13.9.1998 and he was told that the said vehicle will be available on 13.9.1998. Pursuant to this, on 13.9.1998 PW-1 Sanket alongwith driver Navnath Satale took the Tata-Sumo jeep to the address give by "Kashinath Jadhav" to PW-8 Sachin at the time of booking of the vehicle on 12.9.1998. PW-1 Sanket met "Kashinath Jadhav" who informed that the trip was

postponed to the next day i.e. to 14.9.1998. It is also informed that the vehicle would be required at 8:00 a.m. on the next day. Hence on the next day, the driver Navnath Satale took the vehicle to the given address. However, after some time he came back and he informed PW-2 that he found the persons to be suspicious. Thereupon, PW-2 Anand Vaidya made inquiry with the said "Kashinath Jadhav", took advance from him for the vehicle and thereafter the Tata-Sumo jeep alongwith "Kashinath Jadhav" and other 5-6 members left Thane for going to Shirdi. Navnath Satale was the driver of the vehicle. On the next day, Navnath Satale returned with the vehicle. Thereafter, on 19.9.1998 at about 10:00 p.m., PW-8 Sachin received telephonic message from the said "kashinath Jadhav" informing that he wanted to hire the vehicle for a trip to Shirdi on the next day i.e. on 20.9.1998 at about 3:00 p.m. PW-8 Sachin agreed to send the vehicle. Accordingly, on the next day driver Navnath Satale took the vehicle at about 2:00 p.m. to the given address. Thereafter, neither the driver Navnath Satale nor the vehicle returned.

. Meanwhile, on 21.9.1998 while PW-4 PI Choudhari was present at Wavi Police Station, the Police Patil of Khopadi village informed him that at about 7:15 a.m. on the bed of Dev-river on Sinnar-Shirdi road a dead body of a male was noticed. Hence, PW-4 PI Choudhari confirmed this fact and he lodged Khabari report as per Exh.81. On the basis of this Khabari report, A.D.No.17 of 1998 was registered at Wavi Police Station. Inquest panchnama (Exh.82) was drawn of the dead body. Thereafter, the body was sent for post-mortem. PW-13 Dr.Jamdade performed post-mortem on the unknown dead body of a male on 21.9.1998. Dr.Jamdade found following external injuries :

1. Ligature mark around the neck 15" X 1/2" with injury of subcutaneom tissue below the ligature.

2. Abrasion over the chest on left side oblique 2" X 1/2" skin deep.

3. Abrasion over the abdomen near

ambilicas oblique 1-1/2" X 1/2" skin deep.

4. Contusion over the Rt. heel 4 cm X 3 cm skin deep.

5. Contusion over the inner lip 2 cm X 2 cm muscle deep. Crepitus over the thyroid gland.

. All these injuries were antemortem. There was blood marks over the lip. Internally all organs were found congested and there was haematome around the thyroid gland with rupture and cartilage fracture. According to the Doctor the deceased died on account of asphyxia due to strangulation. Accordingly, Dr.Jamdade prepared the post-mortem notes (Exh.84). On the dead body there were only blue colour under-pants and all other belongings and clothes of the deceased were found absent.

. On coming to know about the cause of death, PW-4 PI Choudhari realised that it was a case of

murder as well as a case of destroying the evidence of the offence. Hence, PW-4 PI Choudhari formally lodged his F.I.R (Exh.86) at Wavi Police Station. On the basis of this FIR, offence was registered at C.R.No.7 of 1998 under Section 302 and 201 of IPC. At that time the identity of the body was not known, hence, the body was sent to morgue at Nashik Civil Hospital.

. It is the case of prosecution that as per the usual practice it was necessary for the driver Navnath Satale to inform the owner of the vehicle on phone on the next day of his leaving Thane for the place where he had gone. But, there was no such telephonic message from the driver Navnath Satale on the next day i.e. on 21.9.1998 hence PW-2 Anand Vaidya, PW-1 Sanket Vaidya and PW-8 Sachin Vaidya were anxious and they decided to search for the vehicle and the driver. Accordingly, on 23.9.1998 at about 5:30 a.m., PW-1 Sanket and PW-8 Sachin alongwith their friends decided to go Shirdi. On going to Shridi they could not trace the vehicle or the driver. Hence, on their return journey they went to Sinnar police station to make enquiry as to whether there had

been any accident on the Sinnar-Shirdi road. On making enquiry the police at Sinnar police station informed them that there was no report of any accident, but, one unknown dead body was found on the said road and they showed the photographs of the dead body. On seeing the photographs PW-1 Sanket and PW-8 Sachin immediately realised that those were the photographs of their driver Navnath Satale. The police at Sinnar police station then asked them to go to Wavi police station. Hence they went to Wavi police station. There again copies of the photographs were shown to them i.e. Articles 1 to 3. The statements of PW-1 Sanket and PW-8 Sachin came to be recorded by the police and they were told that the dead body was at Nasik Civil Hospital. As the dead body was identified, Police sent letter (Exh.114) to the Medical Officer, Sinnar Municipal Dispensary for mentioning the name of the deceased in the post-mortem notes. As the investigation in this crime had come to an end, ultimately A-Summary was obtained from the concerned Magistrate.

. Thereafter, on account of sheer chance a break through came in this case after about one

year from the commission of this offence. On 12.8.1999 PW-5 Senior PI Ashok Pagare who was attached to parksite police station, Vikroli was investigating C.R.No.159 of 1999 under Sections 457 & 380 of IPC. On getting certain information he apprehended one Fiat car at Juhu. This vehicle was found occupied by original accused Nos.1 to 6. Accused No.1 was at the driving wheel of the said vehicle. Search of accused Nos.1 to 6 and the car was carried out. During the personal search of the appellant-original accused No.1 one plastic bag containing driving licence of driver Navnath Satale alongwith toll receipt of Mumbra Naka and receipt of purchase of diesel and visiting card of Sachin Tours and Travels etc. were found on his person. They came to be seized under panchnama. During the search of the original accused No.2, one nylon rope (Article 6) came to be seized. During the interrogation by PW-5 Senior PI Ashok Pagare of accused Nos.1 to 6 at Vikroli police station information regarding commission of the present offence within the limits of Wavi police station came to light. PW-5 PI Ashok Pagare then transmitted this information to Wavi Police Station. On this information being received by

Wavi police station, officers came to be deputed to apprehend the accused with the property seized. Meanwhile, on 20.8.1999 an application (Exh.115) came to be preferred before the J.M.F.C. Sinnar requesting for permission to investigate the offence in respect of which 'A' Summary was already granted. This application came to be allowed by the J.M.F.C. Sinnar. Meanwhile, other accused i.e. accused No.7 also came to be traced. PW-15 PI Kendre obtained the transfer warrant from J.M.F.C. Sinnar for the transfer of accused Nos.1 to 6 who were in custody of Vikroli police station. Thereafter, PW-15 PI Kendre conducted the investigation. During the course of the investigation, an application was made to the Tahsildar PW-7 Prakash Sonawane for holding TIP. Accordingly, TIP came to be held and in the said TIP, PW-1 Sanket and his father PW-2 Anand Vaidya identified the appellant-original accused No.1 as the same person who gave his name as "Kashinath Jadhav". During the course of investigation the vehicle i.e. Tata-Sumo jeep came to be located. Its number plate was found to be changed i.e. it was now numbered as MH-04-A-311. The chasis number and engine number were also found to have

been changed. The said vehicle came to be seized under panchnama Exh.100.

. It is the case of the prosecution that Sharifa-original accused No.7 had accompanied the other accused when they proceeded to Shirdi. However, thereafter she absconded. It is further the prosecution case that accused No.8 had changed the number plate by painting on it. Thereafter, the vehicle was sold to accused No.10 and accused No.9 was the driver of the said vehicle which was found in September, 1999 at Elphinstone Road signal in Mumbai. After completion of investigation, the charge-sheet came to be filed. In due course the case was committed to the Court of Session for trial.

3. The charge came to be framed against the appellant-original accused No.1 and original accused Nos.2 to 8 under Section 396 read with 34 of IPC i.e. infurtherence of common intention committed dacoity of Tata Sumo vehicle and in the commission of such dacoity committed murder of Navnath Satale. In addition thereto, the charge came to be framed against original accused Nos.1

to 8 under Section 201 of IPC for causing disappearance of evidence i.e. clothes and driving licence of the deceased and other documents. As far as original accused Nos.9 & 10 were concerned, charge came to be framed only under Section 412 of IPC i.e. of dishonestly receiving stolen property i.e. Tata Sumo vehicle. All the accused pleaded not guilty to the said charges and claimed to be tried. The defence of the accused is of total denial and false implication. The appellant has also raised a specific defence that he being a Christian was not in a position to speak or understand Marathi and hence could not have posed as "Kashinath Jadhav".

4. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above. Hence, this Appeal.

5. The conviction of the appellant is mainly based on the evidence of PW-1 Sanket Vaidya, PW-2 Anand Vaidya, PW-5 Sr.P.I.Ashok Pagare, PW-7 Tahsildar Prakash Sonawane and PW-8 Sachin Vaidya.

6. PW-1 Sanket had stated that they conducted tourist business and Navnath Satale (deceased) had been employed by them as driver. PW-1 Sanket has further stated that on 9.9.1998 the appellant came to the Vaidya's residence. The appellant approached PW-1 Sanket and gave his name as "Kashinath Jadhav". The appellant wanted to know as to whether it was possible to give Tata-Sumo jeep on hire for his trip to Shirdi. PW-1 Sanket informed the appellant that if he wanted to book the same it was necessary to make an enquiry regarding the availability of the vehicle. Accordingly on 12.9.1998 at about 8:00 p.m. The appellant "Kashinath Jadhav" contacted the Vaidya residence on telephone. The said phone call was received by PW-8 Sachin. The appellant told Sachin that he wanted to hire the Tata-Sumo jeep for his trip to Shirdi on the following day i.e. on 13.9.1998 and whether the said vehicle will be available. Sachin replied in the affirmative. Pursuant to this, on 13.9.1998 PW-1 Sanket alongwith driver Navnath Satale took the Tata-Sumo jeep to the address give by "Kashinath Jadhav" to PW-8 Sachin at the time of booking of the vehicle on 12.9.1998. PW-1 Sanket met "Kashinath Jadhav"

who informed that the trip was postponed to the next day i.e. to 14.9.1998. It is also informed that the vehicle would be required at 8:00 a.m. on the next day hence on the next day, the driver Navnath Satale took the vehicle to the given address. However, after some time he came back and he informed PW-2 that he found the persons to be suspicious. Thereupon, PW-2 Anand Vaidya made inquiry with the said "Kashinath Jadhav", took advance from him for the vehicle and thereafter the Tata-Sumo jeep alongwith "Kashinath Jadhav" and other 5-6 members left Thane for going to Shirdi. Navnath Satale was the driver of the vehicle. On the next day, Navnath Satale returned with the vehicle. Thereafter, on 19.9.1998 at about 10:00 p.m., PW-8 Sachin received telephonic message from the said "kashinath Jadhav" informing that he wanted to hire the vehicle for a trip to Shirdi on the next day i.e. on 20.9.1998 at about 3:00 p.m. PW-8 Sachin agreed to send the vehicle. Accordingly, on the next day driver Navnath Satale took the vehicle at about 2:00 p.m. to the given address. Thereafter, neither the driver Navnath Satale nor the vehicle returned.

. PW-1 Sanket has further stated that on making enquiries they found that the dead body of Navnath Satale was found on the bed of river on Sinnar-Shirdi road. They identified the photographs of dead body to be those of their driver-Navnath Satale. This witness has identified the appellant in the TIP as well as before the Court as being the same "Kashinath Jadhav". No doubt the TIP has taken place after about one year after the incident. However, it is to be seen that the appellant was arrested almost a year after the incident. This witness i.e. PW-1 Sanket, had met the appellant on three occasions i.e. on 9.9.1998 in the evening, on 13.9.1998 in the afternoon and on 14.9.1998 at about 9:00 a.m. and he had detailed conversation with the appellant on all these occasions. Thus, there was sufficient opportunity for him to observe the appellant and later identify him in the test identification parade.

. Thus even though the witness has identified the appellant in the TIP one year after the incident, we find no reason to not rely on his testimony regarding identification of "Kashinath

Jadhav" being the appellant.

7. The evidence of PW-1 Sanket is corroborated by the evidence of PW-2 Anand Vaidya who is the father of PW-1 Sanket. PW-2 Anand was present on 9.9.1998 when the appellant approached them regarding hire of their vehicle. Similarly, on 14.9.1998 at about 9:00 a.m. when the driver came to Vaidya's residence with the vehicle at that time the appellant and other persons were present in the vehicle. On 14.9.1998 PW-2 Anand made detailed enquiries with the appellant as driver Navnath Satale had informed him that he found that the party was of a doubtful nature and hence he should make enquiries. Hence, PW-2 Anand made enquiries with "Kashinath Jadhav", took advance from "Kashinath Jadhav" and thereafter allowed the vehicle to go. From the evidence of PW-2 Anand, it is clear that PW-2 Anand had met the appellant on 9.9.1998 and 14.9.1998. This witness had also an opportunity to have conversation with the appellant. PW-2 Anand had also identified the appellant in the TIP. PW-7 Prakash Sonawane, Tahasildar has conducted the TIP. From his evidence it is brought on record that both PW-1

Sanket and PW-2 Anand identified the appellant in the said parade as being "Kashinath Jadhav".

8. Nothing has been elicited in the cross-examination of any of these witnesses so as to disbelieve their testimonies. We find evidence of both these witnesses i.e. PW-1 Sanket and PW-2 Anand, to be cogent and convincing. Hence we have no hesitation in relying on the same. From the evidence of both PW-1 Sanket and PW-2 Anand, it is clear that on 14.9.1998 the appellant alongwith others took the vehicle of PW-1 Sanket and PW-2 Anand to Shirdi and at that time Navnath Satale was the driver. The identity of the dead body which was found on the Sinnar-Shirdi road has been proved to be that of Navnath Satale. From the injuries observed by the Doctor while conducting the post-mortem and opinion given by the Doctor, it is clear that the death of Navnath Satale was a homicidal one. The deceased was last seen proceeding to Shirdi in the company of the appellant and some other persons. Thereafter, the deceased was not seen alive.

9. PW-5 PI Pagare, attached to Parksite police

station, Vikroli has stated that on 12.8.1999 on certain information, he apprehended the appellant and five other persons in one black Fiat car at Juhu. The appellant was at the wheel of the car. Search was taken of all the persons in the car including the appellant. The said search was taken in presence of panchas. During the personal search of the appellant, the driving licence of Navnath Satale came to be found on his person. So also the card of Sachin Tours and Travels i.e. the travel agency run by PW-1 Sanket and PW-8 Sachin was also found on his person alongwith some other articles. So far as this seizure from the person of the appellant is concerned, it is obvious from the evidence that the appellant came to be apprehended just by chance, hence there was no possibility of any planting of driving licence of the deceased or the card of Sachin Tours and Travels and other documents on the person of the appellant. Infact, PW-5 PI Pagare was attached to Parksite police station, Vikroli and he had nothing to do with Wavi Police Station and he was not even aware of this case pertaining to Wavi Police Station. The seizure of the card of Sachin Tours and Travels and driving licence of deceased

Navnath Satale on the person of the appellant is another incriminating circumstance which goes heavily against the appellant. The appellant has not given any explanation for being in possession of these articles.

10. A faint attempt has been made on behalf of the appellant to suggest that he being a Christian, it was not possible for him to represent himself as "Kashinath Jadhav" i.e. a Maharashtrian. It is also contended that the appellant being a Christian, it was not possible for the owners of the vehicle or for the driver Navnath Satale to believe that he was one "Kashinath Jadhav" a Maharashtrian. In this context it may be mentioned that the learned Sessions Judge had an opportunity to carefully observe the appellant. The learned Sessions Judge has observed that from the appearance of the appellant it was not difficult for the appellant to pretend to be one "Kashinath Jadhav" i.e. a Maharashtrian person. It is well recognised that Christians from the coastal areas of Maharashtra are well versed in Marathi because they are mostly born and brought-up in Marathi culture. In such

case, it was easy for the appellant to represent him to be "Kashinath Jadhav. Thus, we do not find any merit in this submission.

11. Looking to the evidence on record, especially that of PW-1 Sanket, PW-2 Anand, PW-5 PI Ashok Pagare and PW-7 Tahsildar Prakash Sonawane, we find that there is sufficient evidence which implicates the present appellant. Thus, there is sufficient evidence that the appellant alongwith others committed the murder of Navnath Satale in order to rob the vehicle i.e. Tata Sumo. However, the appellant has also been convicted under Section 201 of IPC. From the contents of the inquest panchnama (Exh.82) it is seen that only the under-pant was found on the dead body of Navnath Satale. The clothes of deceased, driving licence of the deceased and other identifying articles and documents were taken away by the accused persons so that it would not be possible to identify the dead body. From this inquest panchnama (Exh.82) and from the evidence on record the appellant is also guilty of offence punishable under Section 201 of IPC.

12. In this view of the matter, we find no merit in this Appeal and the appeal is dismissed. The conviction and sentence dated 16th April, 2002 passed by the learned Ist Adhoc Additional Sessions Judge, Nashik in Sessions Case No.50 of 2000 is confirmed The appellant is in jail. He shall serve out his sentence.

(SMT.V.K.TAHILRAMANI,J) **(S.B.MHASE,J.)**